

CONCLUSION OF MORNING
BUSINESS

The PRESIDING OFFICER. Morning business is closed.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived and passed, the Senate stands in recess until 2:15 p.m.

Thereupon, at 12:41 p.m., the Senate recessed until 2:14 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. THOMAS).

EXECUTIVE SESSION

NOMINATION OF MARSHA L.
BERZON, OF CALIFORNIA, TO BE
UNITED STATES CIRCUIT JUDGE
FOR THE NINTH CIRCUITNOMINATION OF RICHARD A.
PAEZ, OF CALIFORNIA, TO BE
UNITED STATES CIRCUIT JUDGE
FOR THE NINTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the time between 2:15 and 5 o'clock is equally divided between the proponents and opponents of the Berzon and Paez nominations.

The Senator from Utah.

Mr. HATCH. I ask unanimous consent that the debate now occur concurrently on the two nominations, as under the previous order; however, that any votes ordered with respect to the nominations occur separately.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, it is my understanding that has been cleared with the minority on the Judiciary Committee.

Mr. HATCH. That is my understanding.

Mr. REID. That being the case, Senator LEAHY having approved this, we have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, I rise today to speak on the nomination of federal district Judge Richard Paez to the Ninth Circuit Court of Appeals.

Judge Paez was first nominated for this judgeship during the second session of the 104th Congress—a time when all nominees to the Ninth Circuit got bound up with the difficulties we were having in deciding whether to divide the Circuit. Once we established a Commission to study the matter, we were able to begin processing nominees to that court.

Judge Paez was renominated at the beginning of the 105th Congress, but due to questions surrounding his record on the bench and comments he made about two California initiatives, his

nomination elicited heightened scrutiny.

Some have attributed this delay in Judge Paez's consideration by the full Senate to sinister or prejudicial motives. And I can only respond by stating what those very critics already know in their hearts and minds to be true: such aspersions are utterly devoid of truth, and are grounded in nothing more than sinister, crass politics.

As we all know, before any judge can be confirmed, the Senate must exercise its duty to provide assurance that those confirmed will uphold the Constitution and abide by the rule of law. Sometimes it takes what seems to be an inordinate amount of time to gain these assurances, but moving to a vote without them would compromise the integrity of the role the Senate plays in the confirmation process.

And so, it has taken a considerable amount of time to bring Judge Paez's nomination up for a vote. Indeed, it was not before a thorough and exhaustive review of Judge Paez's record that I have become convinced that questions regarding Judge Paez's record have, by and large, been answered.

Because such questions have been answered does not, in all instances, mean they have been answered to my complete satisfaction. But on the whole, I am persuaded that Judge Paez will be a credit to the Ninth Circuit Court of Appeals. In so concluding, I do not want to diminish the seriousness of the concerns raised about certain aspects of Judge Paez's record.

I was troubled by comments Judge Paez made about two California initiatives on April 6, 1995, while sitting as a U.S. District Court Judge. At that time, Judge Paez gave a speech at his alma mater, Boalt Hall School of Law, criticizing the passage of Proposition 187 and criticizing the ballot measure that would later be known as Proposition 209. He described Prop 209 as "the proposed anti-civil rights initiative" and said it would "inflame the issues all over again, without contributing to any serious discussion of our differences and similarities or ways to ensure equal opportunity for all." Judge Paez went on to opine that a "much more diverse bench" was essential in part because how "Californians perceive the justice system is every bit as important as how courts resolve disputes."

When questioned at his hearing about these and other comments contained in the speech, Judge Paez stated that he was referring only to the potential divisive effect Prop 209 would have on California. He acknowledged that the Ninth Circuit had in fact upheld the constitutionality of Prop 209 and that this ruling resolved any question as to the legitimacy of the initiative. He also stated that he disagreed with the use of proportionality statistics in Title VII or employment litigation.

And, perhaps most telling of his judicial philosophy, Judge Paez stated that federal judges must "proceed with caution, and respect that the vote of the people is presumed constitutional."

Legitimate questions have been raised concerning whether his comments were consistent with the Judicial Canon governing judges' extra-judicial activities, and Judge Paez maintains that his remarks fit within the exception set out in that Canon that permits a judge to make a scholarly presentation for purposes of legal education.

I also raised concerns about a decision of Judge Paez's that would allow liability to be imposed on a U.S. company for human rights abuses committed by a foreign government with which the U.S. company had engaged in a joint venture. But it is a single moment in a lengthy catalog of cases in which Judge Paez appears to have handed down solid, legally-supported, precedent-respecting decisions.

Moreover, Judge Paez has earned a good deal of bipartisan support within his home state of California and his native state of Utah, and has given me his word that he will abide by the rule of law and not engage in judicial activism.

For these reasons, I am not willing to stand in the way of this nominee's confirmation. It was during the Committee's thorough review of his record that I became aware of Judge Paez's credentials and career of public service. He is a Salt Lake City native who graduated from Brigham Young University and he received his law degree from Boalt Hall.

Before becoming a Judge on the Los Angeles Municipal Court, he served as an attorney for California Rural Legal Assistance, the Western Center on Law and Poverty, and the Legal Aid Foundation of Los Angeles—and during that time provided legal representation to a Korean War veteran in danger of losing his home to foreclosure, victims of intentional racial discrimination, and others. In 1994, President Clinton nominated, and the Senate confirmed, Judge Paez to sit on the district court bench in the Central District of California.

Although I share many of my colleagues' concerns regarding the stability of the Ninth Circuit, none of us can in good conscience foist those concerns upon Judge Paez—an entirely innocent party with regard to that Circuit's dubious record of reversal by the Supreme Court—and force him into the role of Atlas in carrying problems not of his own making.

Indeed, that Circuit's problems—many of which appear to me to be structural in dimension—call for an altogether different solution than that which this body would seek to impose through its advice and consent powers. And to that end, I have just [this morning] introduced legislation with Senator MURKOWSKI that is being held at